IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 13163 of 2007(P)

PETITIONER:

ANDREW GOMEZ,S/O.MICHEL GOMEZ,AGED 45,
RESIDING AT DAISY DALE TC 32/21 (2) NEAR VELI
TOURIST VILLAGE,MADHAVAPURAM,THIRUVANANTHAPURAM.

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
DISTRICT COLLECTOR,THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.L.G.SURESH BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

W.P.(C) No. 13163 OF 2007

Dated this the 25th June, 2007.

J U D G M E N T

The petitioner is the owner of 25 cents of property comprised in Survey No.2848 of Kadakampally Village. The property was acquired by the Land Acquisition Officer. The award amount was not disbursed to the petitioner on the ground that he failed to produce the title deed. The matter was referred to the Sub Court, under Section 31(2) of the Land Acquisition Act alone. There was no reference under Section 18 of the Act. According to the petitioner, no notice of the L.A.R. was served on his and the Serving Officer returned the notice stating that he expired. The petitioner filed O.P.No.4314/2000 before this Court. In pursuance of the judgment of this Court in O.P.No.4314/2000, the petitioner received the amount awarded. As there was no reference under Section 18(2) of the Land Acquisition Act, no enhancement was awarded.

2. It is averred that the property lying adjacent to the property of the petitioner was also acquired for the very same purpose. Claimant in that case filed petition under Section 18 of the Land Acquisition Act claiming enhancement. The case was referred to Sub Court and numbered as L.A.R.No.89/2000. The Sub Court, by

its judgment, dated 31.7.2006, awarded enhancement. On 19.12.2006, petitioner filed an application before the Land Acquisition Officer claiming the benefit under Section 28A of the Land Acquisition Act, with a photo copy of the award passed in favour of the claimant in L.A.R.No.89/2000. It was averred that the Land Acquisition Officer directed the petitioner to produce the certified copy. Accordingly, he made an application for certified copy, obtained the same and produced before the Land Acquisition Officer, along with another application under Section 29A of the Land Acquisiton Act. That application was rejected on the ground of limitation.

3. The fact that petitioner filed an application on 19.12.2006 is not disputed by the respondents. So, the time will have to be calculated not from 8.1.2007, but from 19.12.2006. But the Land Acquisition Officer has not stated any reason for taking the date of filing of the application as 8.1.2007. If the date of application is taken as 19.12.2006, the application is within time. The Land Acquisition Officer failed to note that production of the judgment is not a condition precedent for maintaining an application under Section 28A of the Land Acquisition Act. In this case, the first application was filed on 19.12.2006. But when the officer insisted for production of a certified copy, the petitioner applied for a certified copy. On receipt of

the copy, he filed the second application. The first application was filed on 19.12.2006. That is within time. The reasoning of the Land Acquisition Officer that application was filed after the expiry of period of limitation is unsustainable. So, Ext.P9 is to be quashed.

In the result, the writ petition is allowed in part. Ext.P9 order passed by the Land Acquisition Officer is quashed. The Land Acquisition Officer is directed to treat the application filed by the petitioner on 19.12.2006 as the application for enhancement and to consider and dispose of the same, in accordance with law, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

K.PADMANABHAN NAIR,
JUDGE

nj.